

**AN ORDINANCE OF THE CITY OF SANTA BARBARA
AMENDING THE MUNICIPAL CODE BY REPEALING THE
EXISTING CHAPTER 28.80 AND TO PROHIBIT THE
OPERATION OR MAINTENANCE OF STOREFRONT
MEDICAL MARIJUANA DISPENSARIES WITHIN THE
CITY OF SANTA BARBARA.**

WHEREAS, it has been the purpose and intent of Chapter 28.80 of the Santa Barbara Municipal Code to regulate the storefront distribution of medical marijuana in a manner which ensures the health, safety, and welfare of the residents of the City of Santa Barbara and which, at the same time, makes certain that all storefront medical marijuana dispensaries comply with the requirements of state law at all times;

WHEREAS, the regulations of Santa Barbra Municipal Code Chapter 28.80, in compliance with the statutory requirements established by the state Compassionate Use Act of 1996 and the State Medical Marijuana Program Act enacted in 2003 (state Health and Safety Code sections 11362.7 through 11362.9 - "the MMP Act"), are not intended to interfere in any way with a patient's right to obtain or use medical marijuana as allowed by state law nor do the City's regulations in any way criminalize the possession or cultivation or transfer of medical marijuana by "primary caregivers" as such possession, cultivation, or transfer may be authorized under the specific circumstances permitted in the Compassionate Use Act;

WHEREAS, under the Compassionate Use Act of 1996 and the MMP Act, only "qualified patients," "persons with identification cards," and "primary caregivers" may cultivate medical marijuana, whether individually or collectively, and only "primary caregivers" may provide it to "qualified patients" or "persons with identifications cards" without fear of state criminal sanctions;

WHEREAS, those medical marijuana collectives within the City which choose to provide medical marijuana to their collective members (as "qualified patients" or "persons with identification cards") do not necessarily need to operate or maintain a storefront location in order to do so in a manner consistent with intent and purposes of the state Compassionate Use Act;

WHEREAS, in recent years, the residents of the City have experienced health, safety, and welfare problems involving the use of marijuana and many of these problems raise public

nuisance concerns relating directly to the on-going operation of some storefront medical marijuana dispensaries under circumstances where the dispensaries purport to comply with the Compassionate Use Act but which, in fact, do not comply with either the Compassionate Use Act and the MMP Act, especially with respect to the illegal distribution or for-profit sale of marijuana to those persons who do not qualify to use or possess medical marijuana;

WHEREAS, Article XI, Sections 5 and 7 of the state Constitution grants the City of Santa Barbara, as a charter city, the plenary police power authority with respect to its own local municipal affairs, particularly with respect to local zoning, land use, and public nuisance concerns so long as Santa Barbara's local police power authority is used in such a way that does not conflict with general state laws which are intended to be of preemptive statewide effect and application; and

WHEREAS, nothing in either the Compassionate Use Act or the MMP Act expressly allows or permits or requires a city to allow or permit the use of real property for the distribution of medical marijuana at storefront locations and, consequently, nothing in state law precludes a charter city from regulating or prohibiting, where necessary and advisable, the use of storefront locations when those locations are being used to distribute medical marijuana.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SANTA BARBARA DO ORDAIN AS FOLLOWS:

SECTION ONE. Chapter 28.80 of Title 28 of the Santa Barbara Municipal Code (a portion of the Zoning Ordinance of the City of Santa Barbara), entitled "Medical Marijuana Storefront Dispensaries," is hereby repealed in its entirety and Santa Barbara Municipal Code Title 28 is amended to enact a new Santa Barbara Municipal Code Chapter, Chapter 28.80, which shall read as follows:

Section 28.80.010 Prohibition on the Use of Real Property to Operate or Maintain a Storefront Medical Marijuana Dispensary.

A. Prohibition on the Use of Storefronts. It shall be unlawful to use any real property within the City to operate or maintain a storefront for the purposes of using

that real property to distribute or transfer medical marijuana to any person.

B. Consistency with the State Compassionate Use Act.

Nothing herein shall be interpreted or applied to deny any person the right to possess or use medical marijuana, or the ability to assist another person in obtaining the lawful possession of medical marijuana, as such rights and abilities may be granted by the state Compassionate Use Act of 1996 or by state Health and Safety Code sections 11362.7 through 11362.9.